IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

Bail Appl..No. 3989 of 2007(D)

CRMP.1573/2007 of CHIEF JUDL.MAGISTRATE, ERNAKULAM
CRIME NO.RCDST/2005/P.2006.

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PETITIONER:

B.W.JYOTHIKUMAR, S/O.LATE WILSON,
AGED 32, PONNAKALA KUZHIVILA VEEDU,
KANJIRAKULAM POST, TRIVANDRUM DISTRICT.

BY ADV. SRI.JOHNSON MANAYANI

RESPONDENTS: RESPONDENT:

DY,S.P.(B1/STF/NEW DELHI)CAMP AT KOCHI
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY SRI. P.PARAMESWARAN NAIR - SC FOR CBI
AND ASST.SOLICITOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. NO. 3989 of 2007

Dated this the 23rd day of July, 2007

ORDER

Application for regular bail. The petitioner now faces allegations under Sec.302 of the IPC. He has been arrested and he continues in custody from 11/4/07.

2. A lot of events have taken place in this case. The father of the petitioner suffered fatal injuries on 16/2/04 and succumbed to the injuries on 25/2/04. He had suffered such a serious injury on the neck, that it is alleged that from the moment he suffered injuries till he breathed his last, he was not able to communicate by words of the mouth because of that injury. The First Information Statement is lodged by the wife of the deceased i.e., the mother of the petitioner. In that, there is an allegation that the deceased had gone to the house of one Wilfred and it is suspected that the said Wilfred and his son Rolland had caused injuries on the victim. In addition to the injury on the neck, the deceased had other injuries on his

abdomen also.

3. The Investigating Officers of the local police acted on the First Information Statement and the accused persons shown therein were arrested and later released on bail. The petitioner and his mother came to this Court complaining about the inadequate investigation by the local police. Accordingly, another Bench of this Court as per the judgment in **S. Baby and another v. S.I. Of Police** (2006 (1) KLD (Cri) 607) directed that the investigation be taken over by the Central Bureau of Investigation. The C.B.I. had taken over the investigation as per the said judgment. Investigation has now been completed and the final report has been filed. In the final report, it is now alleged that the petitioner is responsible for the injuries suffered by his father.

4. The case rests solely on circumstantial evidence. There are several circumstances relied on by the C.B.I. against the petitioner. To start with it is alleged that the petitioner had a feeling that his father had not done justice to him – both in terms of money/property and also in terms of affection showered. He is alleged to have made a false statement that the Wilfred – the original accused, made a telephone call from his telephone to the

telephone of the petitioner asking his father to proceed to the house of Wilfred on the early hours of the date of the incident. After the father proceeded to the house of Wilfred, the petitioner is alleged to have clandestinely taken his car out of his house to follow his father. The petitioner is a taxi driver and the car which he drives as an employee is parked in the residential premises of the petitioner, it is alleged. The prosecution theory is that the petitioner had purchased a weapon prior to the incident which purchase, according to the C.B.I., was for the implementation of his scheme of put his father death. At the scene of the occurrence the said knife was allegedly found abandoned after the petitioner allegedly returned to his house after inflicting the injuries on his father. The information about the injury to the father was allegedly passed on to the petitioner's house over the telephone and directly. The petitioner allegedly went to the scene of the crime, took his father in the car and ultimately took him to the Medical College Hospital. He is alleged to have prevailed upon his mother to make a false allegation that Wilfred and Rolland had committed the offence. The petitioner is alleged to have not shown any curiosity or anxiety to ascertain from his father the person who

allegedly inflicted the injuries. There is also an allegation that the deceased father had attempted to point to the petitioner when he was asked about the assailant. But the significance of that conduct was not perceived at that stage. Finally, reliance is placed on the scientific tests of polygraph, brain mapping and narco analysis. It is on basically from these circumstances as also the confession of the petitioner that the prosecution alleges that the petitioner is responsible for the death of his father.

5. The learned Standing Counsel for the C.B.I. submits that the allegations against the petitioner show great depravity of mind. He had after prior scheming done his father to death. He had engineered things in such a way as to make false allegations against a friend of his father and his son. The prosecution has a further case that, in the course of investigation, (including the narco analysis test) it has been revealed that the petitioner had caused the death of his mother-in-law by poisoning her. It is contended that though no crime has been registered in respect of the death of the mother-in-law, the Investigating Officer, after completing the investigation in this case, has addressed a letter to the Kerala police informing them of the need to conduct further investigation into that crime also. In these

circumstances, the learned Standing Counsel for the C.B.I. vehemently contends that the petitioner may not be enlarged on bail

6. The learned counsel for the petitioner submits that these allegations have been belatedly raised. The circumstances urged are not convincing at all. Belated attempts have been made to make false allegations against the petitioner. There are convincing circumstances to show that the petitioner was interested in ascertaining the true cause of death of his father. That explains why the petitioner along with his mother had come to this Court with a prayer for proper investigation to be conducted by the C.B.I. It would be myopic now to jump to a conclusion on the basis of the materials relied on by the C.B.I. that the petitioner is responsible for the death of his father. At any rate, the petitioner, who has remained in custody from 11/4/07, does not deserve to be detained in custody any longer. For the investigational needs such detention is totally unnecessary. It is further submitted that the theory about the death of his mother-in-law having been caused by the petitioner is also not justified at all. The vague and sweeping allegations raised in the letter addressed to the Kerala police by the

Investigating Officer may not, in any way, weigh with the court while considering this bail application. If and when such allegation is raised, the petitioner can effectively counter the allegations raised in such crime. It cannot be forgotten that no such crime has been registered so far by any authority. The mere possibility of registering of such a crime may not stand in the way of this Court directing release of the petitioner on bail in this case, submits the learned counsel.

7. I have very anxiously considered all the relevant input. In the nature and circumstances of this case, detailed arguments were directed to be advanced. The learned Standing Counsel for the C.B.I. was requested to place before this Court all the relevant materials relied on by the Investigators. I shall scrupulously avoid any detailed discussion on merits about the acceptability of the materials, about the circumstances, and as to whether the circumstances are sufficient to justify a reasonable inference or guilt against the petitioner. Suffice it to say that on an anxious consideration of all the relevant inputs, I am of opinion that the petitioner can be enlarged on bail now subject, of course, to appropriate and strict conditions. Further pre-trial detention of the petitioner in this case does not appear to be

necessary, the Investigation having already been completed and the charge sheet having already been filed. Appropriate safeguards can be insisted to ensure that the petitioner does not tamper with the materials collected.

8. I may hasten to observe that I have not intended to express any opinion on the sustainability of the allegation against the petitioner about the death of his mother-in-law having been caused by the petitioner. If and when such allegation is raised and the petitioner is arrested or apprehends arrest those details can be considered.

9. **In the result:**

(a) The application is allowed.

(b) The petitioner shall be released on bail on the following terms and conditions:

(i) The petitioner shall execute a bond for Rs.1,00,000/- (Rupees one lakh only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioner shall report before the Investigating Officer of the C.B.I. at Cochin on the 1st Monday of all English calendar months between 10 a.m. and 12 noon until further orders.

(iii) Except for the purpose of appearance in the court as directed above or as directed by any competent court later, the petitioner shall not enter the Sessions Division of Trivandrum until further orders.

(iv) The petitioner shall furnish to the Investigating Officer on the next Monday of appearance following his release, the address of his place of residence outside the Sessions Division of Ernakulam and shall keep the Investigating Officer informed of any later changes of address.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge